

Sup. Ct. Court U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1580

T. SCOTT McVEA, PERCY CARRUTH,
MALCOLM WASCOM, J. M. HOLLOWAY,
E. L. GREEN AND WILLIAM MORGAN, JR.,
Plaintiffs-Appellants,

versus

BOARD OF DIRECTORS OF THE
FEDERAL INTERMEDIATE CREDIT BANK,
Defendant-Appellee.

On Appeal from the Supreme Court of the
State of Louisiana

JURISDICTIONAL STATEMENT

RHETT R. RYLAND
of
KOLB AND ROOKS
1364 Nicholson Drive
Post Office Box 2831
Baton Rouge, Louisiana 70821

*Attorney for T. Scott McVea, Percy Carruth,
Malcolm Wascom, J. M. Holloway,
E. L. Green and William Morgan, Jr.*

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OPINIONS BELOW

The opinion of the Louisiana Court of Appeal, Fourth Circuit, is reported at 322 So.2d 448. The opinion of the

Supreme Court of Louisiana, denying writs is reported at 325 So.2d 608. The opinion of the Court of Appeal and the Order denying writs are set forth in Appendix A.

JURISDICTION

This action was brought by appellants under the authority of 12 U.S.C.A. 2258 to be reinstated as directors of the Baton Rouge Production Credit Association (hereinafter BRPCA) and to have their removal declared illegal and invalid. The Louisiana District Court and the Louisiana Court of Appeal, Fourth Circuit, decided the question in favor of appellees and entered judgment directing that the actions of the Federal Intermediate Credit Bank (hereinafter FICB) in removing petitioners be sustained. The Supreme Court of Louisiana denied writs.

Appellants appeal from the denial of writs by the Supreme Court of Louisiana dated January 30, 1976.

Notices of appeal were filed on March 25, 1976 in both the Supreme Court of the United States and the Supreme Court of Louisiana.

The validity of a federal statute on the grounds of its being repugnant to the Constitution of the United States was drawn into question by the proceedings below and the decision was in favor of the validity of the statute. Therefore, jurisdiction to review the judgment of the denial of writs by the Louisiana Supreme Court, the highest court of the State of Louisiana, by appeal is conferred on this court by 28 U.S. Code Section 1257 (2).

STATUTES INVOLVED

The Farm Credit Act of 1971, 12 U.S.C.A. 2001 et seq; and rules and bylaws thereunder; the Administrative Procedure Act, USC 555 (Appendix C).

QUESTIONS PRESENTED

1. Whether the lower courts interpretation and application of the Farm Credit Act deprived petitioners of procedural due process in violation of the United States Constitution?
2. Whether the Farm Credit Act is unconstitutional?
3. Did the lower court err in sustaining the Federal Intermediate Credit Bank's removal of petitioners from the Board of Directors of Baton Rouge Production Credit Association?
4. Does By-Law 260 promulgated under the Farm Credit Act deprive petitioners of procedural due process in violation of the United States Constitution?

STATEMENT OF THE CASE

This is an action seeking to reinstate appellants who were removed from the Board of Directors of the Baton Rouge Production Credit Association by the Federal Intermediate Credit Bank on October 26, 1974. It is appellants contentions that their removal was illegal due to lack of "good cause" for removal and no fair hearing was given.

The Fourth Circuit Court of Appeal found that

"Defendant had resolved pursuant to association By-Law 430 to remove Gerald Phares from office as the Association President. When plaintiffs were informed of this decision they complied by accepting a resignation from Phares on August 22, 1974."

In order to understand what happened, one must investigate the circumstances surrounding this resignation. The appellants accepted Phares' resignation **under protest** and under duress. The night the resignation was accepted the meeting had been adjourned and the hour was approaching midnight. Vernon Wright, the FICB President, then called on ten employees to come forth and lodge a composite accumulation of grievances against Phares. Mr. Wright had known of these complaints since 10 o'clock that morning, but had waited until 10 o'clock that night to present them. Mr. Wright had conversed with the employees directly that morning and did not notify appellants.

That night the directors of the BRPCA requested additional time to study this matter because it was simply the first time they had heard of it and it was now **3:30 a.m.** Several of the plaintiffs-appellants are elderly and did not want to make this important decision on the spur of the moment at this late hour. Testimony at the trial showed that young men were lying on the floor sleeping. (Mr. McVea is age 65, Mr. Holloway age 66, Mr. Carruth age 71, Mr. Green age 77.) The important point here is that no true agreement was ever reached by anybody the night the Board of Directors of BRPCA accepted Gerald Phares' resignation. Appellants wanted additional time to investigate the charges. This was quite clear to Mr. Wright at the time.

Subsequently, appellants made numerous appeals within

the framework of the Farm Credit System, all to no avail. On August 26, 1974 a letter was written to U.S. Senator Russell Long signed by all directors requesting help. On September 3rd a letter was written to E. A. Jaenke, Governor of Farm Credit. A letter was also sent to Mr. John Greeneise, Governor of Farm Credit. The letters to Mr. Jaenke and Mr. Greeneise received no response. These numerous appeals subsequently became part of the charges and additional reasons for the removal of appellants.

On September 18, 1974 appellants decided they would rescind their prior acceptance of Phares' resignation. This would simply overrule prior action taken by **appellants** and would not contravene an FICB order. Phares was reinstated whereupon he was immediately removed by Mr. Wright on September 18. Prior to this time Mr. Wright had taken no formal action regarding Gerald Phares. Once Mr. Wright acted on the Phares incident the appellants complied. The appellants did not feel that they had acted in contravention of any order of the FICB because the FICB had not given any orders, nor had Mr. Wright.

At the time when the appellants reinstated Phares the FICB had taken no action on this matter other than mere suggestion. To contravene a suggestion is hardly good cause to warrant removal of an entire board of directors.

On October 10, 1974 the FICB adopted a resolution charging each director of BRPCA with serious charges. The appellants responded to these charges with an answer that denied them and that also set forth affirmative complaints. Appellants charged that the FICB had bypassed them in dealing with the complaining employees. Subsequently, ap-

pellants response became a part of the charges and the reasons for their removal.

Appellants responded to the formal charges by appearing in New Orleans on October 25, 1974, with their attorney to assist them at a formal hearing. However, appellants were told that the meeting would be an informal discussion looking toward the future and that their attorney would not be necessary. Appellants' attorney left the meeting at that time.

All appellants testified that it was not a fair or a full hearing. All directors of the FICB admitted on cross examination that they did not bring past events up for discussion. Some directors of the FICB stated that the incident with Gerald Phares was the sole reason they voted to remove the appellants, however, **this event was not brought up for discussion.**

It is evident that no procedure was adhered to by the FICB. Appellants were never given the benefit of rules and the FICB conducted the meeting the way they wanted. It was shown that the FICB's attorneys advised the FICB on what to do; therefore, it was not necessary for the FICB's attorneys to be present. However, the appellants did not know what to do, their attorney was excluded and this gave the FICB an additional unfair advantage. The Administrative Procedure Act, 5 USC 555, provides that "a person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented and advised by counsel. . ." This was clearly violated.

The right to a hearing implies that a **fair hearing** will be given. This right is created in the By-Laws of BRPCA by

Section 260. As interpreted by the Louisiana Court of Appeal, By-Law 260 requires only that each plaintiff had to be "given such amount of time to present his views on the removal as may be determined by the board." Under this interpretation the FICB had the right to give whatever type of hearing it so desired, i.e., when, where and how the hearing would be conducted, if such hearing would be conducted at all. This is contrary to the intent of the Farm Credit Act and deprives petitioners of procedural due process in violation of the constitution of the United States. This is in direct conflict with the Administrative Procedure Act, 5 USC 555.

Appellants assert that the entire Farm Credit Act was interpreted and applied in an unconstitutional manner by the Trial Court and the Court of Appeal. As set forth in the petition, all procedural safeguards were denied appellants by the FICB:

- a. No confrontation of witnesses.
- b. No sworn testimony of witnesses.
- c. No cross-examination of witnesses.
- d. Their attorney was excluded.
- e. There was no review of the entire record.
- f. The Board that brought the charges as accusers also heard the charges as judges.
- g. No opportunity for appeal.
- h. No transcript of the proceedings.

The denial of all traditional safeguards applicable to hearings clearly shows that the hearing was a mere attempt to comply with the By-Law requiring a hearing. There must be some judicial review of the entire corporate procedure if there is to be any guarantee that the hearing was not a sham. See *27 U. of Cinn. L. Rev.* 93.

In their petition filed in the State District Court the appellants raised the following additional federal questions:

1. That the FICB's action was the culmination of a series of unwarranted interference with appellants right as a board to manage the daily business affairs of BRPCA, all in violation of Section 220 of the By-Laws and the spirit and intent of the Farm Credit Act.
2. That the FICB of New Orleans has encouraged employees to bypass appellants board and to consult directly with FICB of New Orleans contrary to the true spirit and intent of the Farm Credit Act, 12 USC 2093, et seq.

In the Fourth Circuit Court of Appeal the appellants assigned error to the trial court finding **good cause** to remove petitioners. Appellants also assigned error in the finding that the FICB had awarded appellants a "**fair hearing.**" Appellants also contended that the trial court unduly restricted the scope of cross examination thereby depriving appellants of effective cross examination.

Upon oral argument in the Fourth Circuit Court of Appeal appellants asserted that the statutes and bylaws of the Farm Credit Act deprived them of procedural due process in violation of the Constitution of the United States. The Court

of Appeal however noted in a footnote at Page 450 of the opinion that the question of procedural due process was never alleged or asserted.

In their petition for writs filed in the Louisiana State's Supreme Court the appellants asserted that the Court of Appeal erred in its interpretation of By-Law 260 and the Farm Credit Act and this erroneous interpretation deprived petitioners of procedural due process in violation of the United States Constitution. The Supreme Court of Louisiana denied writs (See: Appendix A hereto).

THE QUESTIONS ARE SUBSTANTIAL

This appeal presents substantial constitutional questions involving the rights of farmers and ranchers to manage, control and operate a system of credit for agriculture.

The basic idea behind the Farm Credit System is that local production credit associations will manage their own affairs, subject to supervision by the Intermediate Credit Banks. This supervision by the FICB should be done in a **reasonable manner.** It is submitted that few farmers or ranchers would allow themselves to be "supervised" in the manner attempted by Mr. Wright at 3:30 a.m. on the night Phares was removed.

The Farm Credit Act was designed to give ample management and control to the local production credit association board of directors. This is shown by the Congressional Declaration of Policy and objectives of the Farm Credit System as set forth in the Farm Credit Act, 12 USCA Section 2001 (b) as follows:

"It is the objective of this Chapter to continue to encourage **farmer and rancher borrowers participation in the MANAGEMENT, CONTROL AND OWNERSHIP** of a permanent system of credit for agriculture."

It is provided in 12 USCA Section 2093 that each Production Credit Association shall:

"(6) operate under the direction of its **Board of Directors** in accordance with this Chapter."

"(17) elect by its Board of Directors a manager or other chief executive officer and provide for such other officers and employees as may be necessary."

"(20) exercise by its **Board of Directors** . . . all such incidental powers as may be necessary or expedient to carry on the business of the association."

The above listed powers are "subject to **supervision** by the Federal Intermediate Credit Bank for the district and the Farm Credit Administration."

Section 220 of the Bylaws provides:

"220 Powers and Duties"

"The board of directors shall have **general control and direction** of the affairs of the association. It shall determine association policy matters, periodically review the operations of the association and keep itself informed of the association's fulfillment of its objective, goals, and responsibilities."

Thus appellants had "**general control**" and "**general direction of the affairs**" subject to "**supervision**" by the FICB.

The general atmosphere pervading Production Credit Associations is one of self help and this is recognized to be healthy for the economy. The Congressional intent is set forth in the Congressional Record, Page 38533, November 1, 1971, as follows:

"Self-Help Among Farmers. Nevertheless, there is a new and growing attitude of self-help—cooperation in our farm communities—that is making itself felt in national policies.

"This is evident in the strengthening of the commodity oriented organizations. Through such organizations, farmers are developing programs of their own and assuming the responsibilities of supply management and a disposition of surplus production to maximize returns to producers and to avoid the age-old problem of imbalance in supply and demand. This growing emphasis on restoring more freedom of choice to farmers is evident in our overall farm policy. And while it is too early to completely write off the necessity of production control in certain circumstances, the new commodity programs provided in the Agricultural Act of 1970 are providing farmers a much greater latitude in their planning of production and marketing. Nowhere in agriculture is this attitude of self-help among farmers more important than in the farmer-owned and operated Farm Credit System, of which this association is a part." (Emphasis added)

It is difficult to define the perimeters of authority of the FICB and the Production Credit Associations. Section 6000 of the Farm Credit Rules states that "The Farm Credit Act could permit overlapping of services among the units of the system in the absence of appropriate coordination." Appellants contend that there was not appropriate coordination in

the instant case. Section 2020 of the Farm Credit Rules states that the FICB is supposed to develop personnel programs for Production Credit Associations and that they are supposed to be consistent with their own personnel programs. Trial Exhibit P-14 is a copy of the FICB procedure for handling grievances of employees in New Orleans. These procedures were not given to the BRPCA board. The minutes of October 4 at Page 17 (Trial Exhibit P-8) indicate that Mr. Wright was not aware of this when he was asked by the BRPCA if such procedures did exist. This indicates a lack of supervision and coordination in this area prior to this time. This is a nebulous area without decided cases to use as guidelines. Accordingly, the FICB should not summarily remove an entire board of directors for actions such as are involved in this case.

CONCLUSION

For the reasons stated these important constitutional issues warrant this court's consideration of the Farm Credit Act and the procedures to be utilized thereunder. It is respectfully submitted that probable jurisdiction should be noted.

Respectfully submitted,

KOLB AND ROOKS

By Rhett R Ryland
 Rhett R. Ryland
Attorneys for Plaintiffs-Appellants

PROOF OF SERVICE

The undersigned attorney for plaintiffs-appellants herein and a member of the Bar of the Supreme Court of the United States hereby certify that on the 27 day of April, 1976, I served a copy of the foregoing jurisdictional statement on the Board of Directors of the Federal Intermediate Credit Bank of New Orleans, defendant appellee herein, by mailing a copy of the same, in an addressed envelope with postage prepaid to his counsel of record, Ralph Kaskell, Deutsch, Kerrigan and Stiles, 4700 One Shell Square, New Orleans, Louisiana, 70139.

Baton Rouge, Louisiana, this 27 day of April, 1976.

Rhett R Ryland
 RHETT R. RYLAND

APPENDIX A**Opinions Below****SUPREME COURT OF LOUISIANA**

January 30, 1976

NO. 57,319**T. SCOTT McVEA, ET AL***versus***BOARD OF DIRECTORS OF THE FEDERAL
INTERMEDIATE CREDIT BANK**

In re: T. Scott McVea, Percy Carruth, E. L. Green, Malcolm Wascom, J. M. Holloway and William M. Morgan, applying for Certiorari, or writ of review, to the Court of Appeal, Fourth Circuit, Parish of Orleans.

Writ denied. On the facts found by the Court of Appeal, there is no error of law in the judgment complained of.

/s/ FWS

/s/ JWS

/s/ AT Jr.

/s/ JAD

/s/ PFC

/s/ WFM

/s/ JLD

A TRUE COPY
 Clerk's Office
 Supreme Court of Louisiana
 New Orleans
 January 30, 1976

/s/ Phil Trice
 Deputy Clerk

Kolb & Rooks, Rhett R. Ryland and L. P. Cooper, Jr.,
 Baton Rouge, for plaintiffs-appellants.

Deutsch, Kerrigan & Stiles, Ralph L. Haskell, Jr., R. Emmett Kerrigan and Robert G. Stassi, New Orleans, for defendant-appellee.

Before REDMANN, GULOTTA and SCHOTT, JJ.

SCHOTT, Judge.

Plaintiffs are former members of the Board of Directors of Baton Rouge Production Credit Association (hereinafter sometimes referred to as the Association). Defendant is the Federal Intermediate Credit Bank of New Orleans.¹

Federal Intermediate Credit Banks and Production Credit Associations are components of the Farm Credit System established by the Farm Credit Act of 1971, 12 U.S.C.A. § 2001 et seq. In the hierarchy of the system each Intermediate Credit Bank operates under the supervision of the Farm Credit Administration, and it may "Delegate to the production credit associations such functions vested in or delegated to the intermediate credit bank as it may determine." § 2072. Each

¹ The title of the case suggests that the individual members of the Board of Directors of the Bank were defendants, but the bank itself was the only actual defendant in the case.

Production Credit Association is subject to the supervision of the Intermediate Credit Bank for the district. § 2093. The Baton Rouge Association operates in defendant's district under bylaws approved by the Farm Credit Administration, which bylaws includes the following provisions:

360 Removal

"A director may be removed from the Board at any time . . . by the board of directors of the bank for good cause; provided, however, that the director to be removed shall be given such amount of time to present his views on the removal as may be determined by the board."

430 Removal

"The chairman, vice-chairman, and chief executive officer, may be removed as officers at any time by a majority vote of the higher membership of the board of directors of the association, or by the bank."

Plaintiffs have appealed from a dismissal of their suit to compel defendant to reinstate them as directors of the Association and to restrain defendant permanently from removing plaintiffs from office. The jurisdiction of the State Courts over this dispute is based upon 12 U.S.C.A. § 2258.

Defendant had resolved pursuant to Association's bylaw 430 to remove Gerald Phares from office as the Association's president. When plaintiffs were informed of this decision they complied by accepting a resignation from Phares on August 22, 1974. However, on September 18 plaintiffs reinstated Phares to his office whereupon he was removed by defendant. On October 10 defendant served notice on plaintiffs, charging them among other things with failure to allow defendant to supervise them in the exercise of the functions delegated to them, notifying them that they might present written response to the charges by October 18, and directing them to appear at a meeting on October 25 to present any further

views they might have on said charges. Plaintiffs were further advised that after said responses and views were received by defendant a determination would be made as to whether all or any of the plaintiffs should be removed from office.

In a written response to this notice plaintiffs denied that they had failed to allow defendant to supervise them and accused defendant of "unreasonable interference" particularly with regard to the removal of Phares from the presidency of the Association. They characterized the conduct of defendant's president regarding Phares' removal as "unwarranted interference" with their authority.

On October 25 defendant's board, after meeting with and hearing from plaintiffs, removed them from office as directors of the Association.

In this Court plaintiffs contend that, 1) they were not removed from office for "good cause" as required by bylaw 260, 2) they were not given "fair hearing" before their removal, and 3) they were prejudiced by a number of rulings on objections during the trial by the trial judge.

[1] 1. It is clear from the statutory grant of supervisory power to defendants and the provisions of the bylaws with regard to the removal of Phares as president of the Association that plaintiffs' action in reinstating Phares after agreeing to accept his resignation was insubordination constituting "good cause" for plaintiffs' removal.

[2] 2. Bylaw 260 requires only that each plaintiff had to "be given such amount of time to present his views on the removal as may be determined by the board." Plaintiffs were given and did exercise the right to present their views in writing and orally at a meeting with defendant's board. We do not find any support in the statutes or bylaws for plaintiffs' contention that they were entitled to such rights as

those of confrontation or sworn testimony or cross examination by witnesses, representation by counsel, or transcription of proceedings at a pre-removal hearing.²

[3] 3. Finally, the eighteen evidentiary rulings complained of are isolated from a voluminous transcript of a three day trial. No good purpose will be served here by discussing each of these rulings in detail. We agree with the trial judge that the questions objected to called for irrelevant or repetitious testimony having no probative value on the issue of whether defendant complied with the statutes and by-laws in removing plaintiffs from office.

Accordingly, the judgment appealed from is affirmed at plaintiff's cost.

Affirmed.

* * * *

**CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA**

NUMBER 583-707

DIVISION "H"

DOCKET NO. 5

T. SCOTT McVEA ET AL

versus

**THE BOARD OF DIRECTORS OF THE FEDERAL
INTERMEDIATE CREDIT BANK**

REASONS FOR JUDGMENT

In this action plaintiffs attack their removal as Directors

² Plaintiffs have never alleged or asserted that the statutes or bylaws deprived them of procedural due process in violation of the Constitution of the United States.

of Baton Rouge Production Credit Association (BRPCA) and seek a mandamus ordering their reinstatement and recognition as members of BRPCA.

The defendant bank, Federal Intermediate Credit Bank of New Orleans, is a corporation originally chartered and established in 1923 pursuant to the Federal Farm Loan Act and perpetuated under the Federal Farm Credit Act of 1971.

As expressly provided in the Farm Credit Act of 1971, 12 USC 2071 et seq., defendant has power to supervise the exercise by all PCA's in said District No. 5, including BRPCA, of the functions vested in or delegated to them. Thus, 12 USC 2072 contains the following express language:

"Each Federal intermediate credit bank shall be a body corporate, and, subject to supervision of the Farm Credit Administration, shall have power to—

* * *

"(15) . . . supervise the exercise by the production credit associations of the functions vested in or delegated to them."*

The Farm Credit Act, in providing for the organization and powers of PCA's, also provides that each of them shall be subject to supervision by the Federal Intermediate Credit Bank for the district in which it is located. Thus, in providing for the general corporate powers of PCA's, the first paragraph of 12 UCS 2093 states:

"Each production credit association shall be a body corporate, and subject to supervision by the Federal intermediate credit bank for the district and the Farm Credit Administration, shall have power to — . . ." (enumerating powers.)

Sec. 410 of the bylaws of BRPCA gives the Bank the right to remove the Chief executive officer of any PCA in its district.

"430 Removal"

The chairman, vice chairman, and chief executive officer may be removed as officers at any time by a majority vote of the entire membership of the board of directors of the association, **or by the Bank.**"

Under Sec. 260 of the bylaws of BRPCA, the board of directors of the Bank may remove a director of BRPCA for good cause.

Section 260 reads in part as follows:

"A director may be removed from the board at any time . . . by the board of directors of the Bank for good cause; provided, however, that the director to be removed shall be given such amount of time to present his views on the removal as may be determined by the Board."

It is the opinion of the Court that the removed directors were given the proper hearing and sufficient time to present their views on the removal.

It is the further opinion of the Court that the Bank had good cause to remove the plaintiffs from the board of directors of BRPCA.

In short the Court is of the opinion that the removal of plaintiffs from the board was legal in every respect and was justified.

There will be judgment accordingly.

New Orleans, La.
December 29, 1974.

/s/ OLIVER P. CARRIERE

**CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA
NUMBER 583-707**

DIVISION "H"

DISTRICT 5

T. SCOTT McVEA, ET AL

versus

THE BOARD OF DIRECTORS OF THE FEDERAL
INTERMEDIATE CREDIT BANK

JUDGMENT

The application of, T. Scott McVea, Percy Carruth, Malcolm Wascom, J. M. Holloway, E. L. Green and William M. Morgan, Jr., the relators herein for a writ of mandamus, having been heretofore tried, argued and submitted to the Court for adjudication on December 19, 1974, and for the written reasons herein filed and made part of the record:

PRESENT: RHETT R. RYLAND, attorney for relator.

RALPH L. KASKELL, JR., attorney for respondent.

IT IS ORDERED, ADJUDGED AND DECREED that the alternative writ of mandamus herein issued be set aside and annulled, and that the relators', T. Scott McVea, Percy Carruth, Malcolm Wascom, J. M. Holloway, E. L. Green and William M. Morgan, Jr., demands be rejected, and said plaintiffs' suit be dismissed at their costs.

JUDGMENT READ, RENDERED AND SIGNED IN
OPEN COURT ON DECEMBER 20th, 1974.

/s/ OLIVER P. CARRIERE, Judge.

APPENDIX B
Notice of Appeal

SUPREME COURT
STATE OF LOUISIANA

NUMBER 55,910

T. SCOTT MVEA, ET AL,
Plaintiff-Appellants

versus

BOARD OF DIRECTORS OF THE
FEDERAL INTERMEDIATE CREDIT BANK
Defendant-Appellees

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that T. Scott McVea, Percy Carruth, Malcolm Wascom, J. M. Holloway, E. L. Green and William M. Morgan, Jr., plaintiff-appellants, named above hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of Louisiana affirming the judgment of the Louisiana Court of Appeal Fourth Circuit in refusing to issue writs to correct the errors of law in the judgment that was entered in this action on December 20, 1974.

This appeal is taken pursuant to 28 USC 1257.

The following questions are presented by this appeal:

1. Whether the lower courts' interpretation of the Farm Credit Act deprived petitioners of procedural due process in violation of the United States Constitution.
2. Whether the Farm Credit Act is unconstitutional.
3. Did the lower court err in sustaining the removal of petitioners from the Board of Directors of Baton Rouge Production Credit Association.
4. Does By-Law 260 promulgated under the Farm Credit Act deprive petitioners of procedural due process in violation of the United States Constitution.

Respectfully submitted,
 BY ATTORNEYS:
 KOLB AND ROOKS

BY: RHETT R. RYLAND
 1364 Nicholson Drive
 Post Office Box 2831
 Baton Rouge, Louisiana 70821
 (504) 343-2875

*Attorneys for T. Scott McVea, Percy Carruth,
 Malcolm Wascom, J. M. Holloway,
 E. L. Green and William Morgan, Jr.
 Plaintiffs-Appellants*

PROOF OF SERVICE

The undersigned attorney for T. Scott McVea, Percy Carruth, Malcolm Wascom, J. M. Holloway, E. L. Green and William Morgan, Jr., plaintiffs-appellants herein and a member of the Bar of the Supreme Court of the United States hereby certify that on the 25th day of March, 1976, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on the Board of Directors of the

Federal Intermediate Credit Bank, defendant-appellee herein, by mailing a copy of same in an addressed envelope with postage prepaid to his counsel of record Ralph L. Kaskell, Jr. of Deutsch, Kerrigan & Stiles, 4700 One Shell Square, New Orleans, Louisiana 70139.

Baton Rouge, Louisiana, this 25th day of March, 1976.

/s/ RHETT R. RYLAND

APPENDIX C

Statutes Involved

12 USC § 2001. Congressional declaration of policy and objectives

(a) It is declared to be the policy of the Congress, recognizing that a prosperous, productive agriculture is essential to a free nation and recognizing the growing need for credit in rural areas, that the farmer-owned cooperative Farm Credit System be designed to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operations.

(b) It is the objective of this chapter to continue to encourage farmer- and rancher-borrowers participation in the management, control, and ownership of a permanent system of credit for agriculture which will be responsive to the credit needs of all types of agricultural producers having a basis for credit, and to modernize and improve the authorizations and means for furnishing such credit and credit for housing in rural areas made available through the institutions constituting the Farm Credit System as herein provided.

Pub.L. 92-181, § 1.1, Dec. 10, 1971, 85 Stat. 583.

12 USC § 2008. General corporate powers

(6) Operate under the direction of its board of directors in accordance with this chapter.

(16) Prescribe by its board of directors its bylaws not inconsistent with law providing for the classes of its stock and the manner in which its stock shall be issued, transferred,

and retired, its officers and employees elected or provided for, its property acquired, held, and transferred, its general business conducted, and the privileges granted it by law exercised and enjoyed.

(17) Elect by its board of directors a manager or other chief executive officer, and provide for such other officers or employees as may be necessary, including joint employees, as provided in this chapter, define their duties, and require surety bonds or make other provisions against losses occasioned by employees. No director shall, within one year after the date when he ceases to be a member of the board, be elected or designated a salaried employee of the association on the board of which he served.

(20) Exercise by its board of directors or authorized officers or employees, all such incidental powers as may be necessary or expedient to carry on the business of the association.

Pub.L. 92-181, Title II, § 2.12, Dec. 10, 1971, 85 Stat. 598.

12 USC § 2258. Jurisdiction

Each institution of the System shall for the purposes of jurisdiction be deemed to be a citizen of the State, commonwealth, or District of Columbia in which its principal office is located. No district court of the United States shall have jurisdiction of any action or suit by or against any production credit association upon the ground that it was incorporated under this Act or prior Federal law, or that the United States owns any stock thereof, nor shall any district court of the United States have jurisdiction, by removal or otherwise, of any suit by or against such association except in cases by or against the United States or by or against any officer of the United States or against any person over whom the courts of the State have no jurisdiction, and except in cases by or against

any receiver or conservator of any such association appointed in accordance with the provisions of this chapter.

Pub.L. 92-181, Title V, § 5.24, Dec. 10, 1971, 85 Stat. 624.

5 USC § 555. Ancillary matters

(b) A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding. So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. This subsection does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding.

Farm Credit Rules §2020

Associations. The supervising banks shall develop personnel programs for associations. To the extent feasible or required, such programs shall be consistent with the personnel programs of the banks.

Farm Credit Rules §6000

Responsibility. Each district board is responsible for assuring that each of the institutions under its policy or supervisory authority carries on its functions in the most efficient

manner to the end that eligible farmers, ranchers, producers or harvesters of aquatic products, rural residents, farm-related businesses and cooperatives have access to complete, convenient, and high quality credit and financially-related services at reasonable cost. The Act broadens the lending and service activity authorities of all of the banks and associations to a degree which **could permit inefficiencies and overlapping of services among the units of the System in the absence of appropriate coordination.** In addition, the interests of those using the System are best served when the activities are closely coordinated.

Baton Rouge Production Credit Association Bylaw

Section 260 reads in part as follows:

"A director may be removed from the board at any time . . . by the board of directors of the Bank for good cause; provided, however, that the director to be removed shall be given such amount of time to present his views on the removal as may be determined by the Board."

Baton Rouge Production Credit Association Bylaw

Section 220 of the Bylaws provides:

"220 Powers and Duties

"The board of directors shall have **general control and direction** of the affairs of the association. It shall determine association policy matters, periodically review the operations of the association and keep itself informed of the association's fulfillment of its objective, goals, and responsibilities."

Supreme Court, U. S.
FILED

MAY 26 1976

MICHAEL RODAK, JR., CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1975

NO. **75-1580**

T. SCOTT McVEA, PERCY CARRUTH, MALCOLM
WASCOM, J. M. HOLLOWAY, E. L. GREEN and
WILLIAM MORGAN, JR.,
Plaintiffs-Appellants

versus

BOARD OF DIRECTORS OF THE FEDERAL
INTERMEDIATE CREDIT BANK,
Defendant-Appellee

On Appeal from the Supreme Court of the
State of Louisiana

MOTION TO DISMISS OR AFFIRM

RALPH L. KASKELL, JR.
of
DEUTSCH,KERRIGAN &
STILES
4700 One Shell Square
New Orleans, Louisiana 70139
Attorneys for Board of Directors
of the Federal Intermediate Credit
Bank

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versus

BOARD OF DIRECTORS OF THE FEDERAL
INTERMEDIATE CREDIT BANK,
Defendant-Appellee

On Appeal from the Supreme Court of the State of
Louisiana

MOTION TO DISMISS OR AFFIRM

Appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Louisiana on the grounds: 1) that the federal questions sought to be reviewed were not timely or properly raised or expressly passed on in the state courts; and 2) that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.¹

The provisions of 28 U.S.C. § 2403 may be applicable.

1. Appellants have erroneously invoked this Court's jurisdiction under 28 U.S.C. § 1257(2). The Court may have jurisdiction pursuant to 28 U.S.C. § 1257 (3); in which case 28 U.S.C. § 2103 is controlling.

I.

STATEMENT

The appellee Bank had received information which convinced Bank officials that Phares, president of the Baton Rouge Production Credit Association (BRPCA), should be removed. Defendant so informed the appellants, who were then members of the Board of Directors of BRPCA. At first the Board complied.²

Subsequently, the BRPCA Board defied the Bank, reinstated Phares and took part in a series of acts questioning the authority of the Bank to supervise the BRPCA.³

The Bank proceeded under the BRPCA bylaws to determine whether the BRPCA Board should be removed.⁴ On the trial of appellants' suit for reinstatement, the court found "that the Bank had good cause to remove the plaintiffs from the board of directors of BRPCA."⁵ The Louisiana Fourth Circuit Court of Appeal found as a fact that appellants were guilty of "insubordination constituting 'good cause' for plaintiffs' removal."⁶

2. Jurisdictional Statement, Appendix A, p. 17.

3. *Id.*, pp. 17-18.

4. *Id.*, p. 17.

5. *Id.*, p. 21.

6. *Id.*, p. 18. In addition to the insubordination of reinstating Phares, appellants had "accused defendant of 'unreasonable interference' particularly with regard to the removal of Phares from the presidency of the Association. They characterized the conduct of defendant's president regarding Phares' removal as 'unwarranted interference' with their authority." *Id.*

The trial court had found also "that the removed directors were given the proper hearing and sufficient time to present their views on the removal."⁷ The Court of Appeal found that: "Plaintiffs were given and did exercise the right to present their views in writing and orally at a meeting with defendant's board."⁸

The Court of Appeal noted that "Plaintiffs have never alleged or stated that the statutes or bylaws deprived them of procedural due process in violation of the Constitution of the United States."⁹

The Supreme Court of Louisiana in denying appellants' application for a writ of certiorari, held that: "On the facts found by the Court of Appeal, there is no error of law in the judgment complained of."¹⁰

II.

ARGUMENT

A. Federal Questions Not Timely or Properly Raised or Expressly Passed on in the State Courts

Neither in the pleadings in the trial court nor on appeal to the Court of Appeal did appellants raise a federal constitu-

7. *Id.*, p. 21.

8. *Id.*, p. 18.

9. *Id.*, p. 19, fn. 2.

10. *Id.*, p. 15.

tional question. Only on application for rehearing in the Court of Appeal did appellants claim that the Court of Appeal's interpretation of Section 260 of the bylaws deprived them of procedural due process in violation of the Constitution of the United States. The interpretation of the bylaws by the Court of Appeal was the same as that given by the trial court.¹¹

Since appellants had not raised the constitutional question, the Court of Appeal did not expressly pass on it. Instead, the court stated that the issue was not before it.¹² In the Supreme Court of Louisiana appellants repeated the claim of lack of due process in violation of the Constitution of the United States, first raised on the application for rehearing in the Court of Appeal. The Supreme Court of Louisiana did not expressly pass on the issue.¹³

The constitutionality of the Farm Credit Act, 12 U.S.C. 2001 et seq., was challenged for the first time in this Court.¹⁴

The law in Louisiana is well-settled that issues neither raised by the pleadings nor passed upon by the trial court

11. *Id.*, pp. 18-19, 21.

12. *Id.*, p. 19 fn. 2. It is apparent that the opinion of the Court of Appeal led appellants to seek a new ground of relief, not theretofore urged in any manner by appellants.

13. Jurisdictional Statement, Appendix A, p. 15.

14. *Id.*, p. 3.

cannot be considered for the first time on appeal.¹⁵

Failure on the part of the appellants to raise federal questions at the proper time in the state court will preclude review by this Court. "It is clear that this Court is without power to decide whether constitutional rights have been violated when the federal questions are not seasonably raised in accordance with the requirements of state law."¹⁶

Since Louisiana appellant courts will not consider issues raised the first time on appeal and since this Court is without power to consider federal questions not decided by the highest court of the state,¹⁷ review by the Court is precluded.

The decisions of the Louisiana courts sustaining the Bank's removal of appellants from the Board of Directors of the BRPCA were based on the Farm Credit Act and the BRPCA bylaws promulgated thereunder. Failure on the part of appellants to challenge the constitutionality of the statutes and bylaws at the proper stage of the state court proceedings precludes review by the Court.

15. *Krauss Co. v. Develle*, 236 La. 1072, 110 So.2d 104 (1959); *Liquefied Petroleum Gas Comm'n v. E. R. Kiper Gas Corp.*, 229 La. 640, 86 So. 2d 518 (1956); *Novick v. Miller*, 222 La. 469, 62 So.2d 645 (1952); *Woodward, Wight & Co., v. National Box Co.*, 168 La. 701, 123 So. 296 (1929).

16. *Edelman v. California*, 344 U.S. 357, 358 (1953), *Accord: Mutual Life Ins. Co. v. McGrew*, 188 U.S. 291 (1903).

17. *Street v. New York*, 394 U.S. 576, 581-82 (1969). "Moreover, this Court has stated that when, as here, the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Id.*, p. 582.

B. Questions Are So Unsubstantial As Not to Need Further Argument

The trial court made factual findings that "the Bank had good cause to remove the plaintiffs from the board of directors of BRPCA" and "that the removed directors were given the proper hearing and sufficient time to present their views on the removal."¹⁸ The Court of Appeal made similar factual findings.¹⁹

There was firm statutory and regulatory authority for the Bank's proceeding, as it did, under Section 260 of the BRPCA bylaws.

12 U.S.C. 2093 provides that "Each production credit association shall be . . . subject to supervision by the Federal intermediate credit bank for the district . . .".

The district board of directors of the Farm Credit district acts as the board of directors of the Bank for that district. 12 C.F.R. 611.1000(a).

Under 12 C.F.R. 611.1010:

"The district board acting in that capacity or as the board of a bank, as appropriate, shall .

(a) Adopt bylaws for the bank and approve bylaws for associations . . . in form approved by the

Farm Credit Administration. Bylaws and amendments to bylaws proposed by a bank or association require Farm Credit Administration approval before implementation."

The BRPCA was operating under bylaws approved by the Farm Credit Administration pursuant to statute and regulations issued thereunder.

Even if the Bank was engaged in governmental action, federal in character, "[t]he Fifth Amendment does not require a trial-type hearing in every conceivable case of government impairment of private interest."²⁰

All Louisiana state courts have found that appellants received the hearing provided in Section 260 of the BRPCA bylaws. Appellants have pointed to no decision of this Court that supports their claim of lack of due process. No substantial question has been presented for decision by this Court

CONCLUSION

Appellee submits that the federal questions sought to be reviewed were not timely or properly raised or expressly passed on in the state courts of Louisiana and that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument. Appellee moves to dismiss the appeal or, in the alternative, to affirm

18. Jurisdictional Statement, Appendix, p. 21.

19. *Id.*, pp. 18-19.

20. *Cafeteria Workers, Local 473 v. McElroy*, 367 U.S. 886, 894 (1961). See also: *Crimmins v. Am. Stock Exch., Inc.*, 346 F. Supp. 1256, 1259 (S.D.N.Y. 1972), aff'd. on opinion below, 503 F.2d 560 (2nd Cir. 1974).

the judgment of the Supreme Court of Louisiana.

Respectfully submitted,

RALPH L. KASKELL, JR.
of
DEUTSCH, KERRIGAN & STILES
4700 One Shell Square
New Orleans, Louisiana 70139
581-5141
Attorneys for Appellee, Board of
Directors of the Federal Intermedi-
ate Credit Bank

PROOF OF SERVICE

The undersigned attorney for Defendant-Appellee herein, a member of the Bar of the Supreme Court of the United States, hereby certifies that on the 21st day of May, 1976, three (3) copies of the foregoing motion have been served on Rhett R. Ryland, Esq., of Kolb & Rooks, 1364 Nicholson Drive, P.O. Box 2831, Baton Rouge, Louisiana 70821, attorney for plaintiffs-appellants, and on the Solicitor General, Department of Justice, Washington, D.C., 20530 by depositing said copies in a United States Post Office or Mail Box, with first class postage prepaid, addressed to said respective counsel at their respective post office addresses. All parties required to be served have been served.

RALPH L. KASKELL, JR.